

## STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK ATTORNEY GENERAL

DIVISION OF ENVIRONMENTAL QUALITY DEPARTMENT OF HEALTH & WELFARE 1410 N. HILTON, 2ND FLOOR BOISE, IDAHO 83708 TELEPHONE: (208) 334-0494 FACSMILE: (208) 334-0576

March 13, 1992

Michael E. McNichols Clements, Brown & McNichols 13th and Idaho Streets Lewiston, Idaho 83501

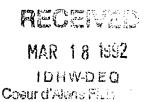
Grace Koh Angelos Jenner & Block 1 IBM Plaza Chicago, Illinois 60611

Re: Avery Landing

Dear Mike and Grace:

I have enclosed a letter we received from Mr. Zotter with the Highway Administration. Although the Department acknowledges that whether sovereign immunity has been waived is arguable, the Department strenuously objects to Mr. Zotter's application of the state Water Quality Standards. It is the Department's position that petroleum products are continuously being released or discharged from the soils to the ground water, and via ground water seeps to the St. Joe River. Thus, there is a continuing violation of the Water Quality Standards prohibition against the discharge or release of pollutants and a continuing obligation to respond to the release or discharge in a manner provided for in IDAPA § 16.01.02850. This is particularly true with respect to Potlatch's property because the petroleum products are seeping directly from the property to the St. Joe River. common law nuisance theory also provides authority for the abatement of this continuing release or discharge.





Michael E. McNichols Grace Koh Angelos Page 2 March 13, 1992

The Department intends to resolve this matter with a Consent Order that incorporates the remediation method previously agreed to between the parties. Please let me know whether Potlatch and CMC will cooperate with the state to clean up this property.

Douglas M. Conde

Deputy Attorney General

DMC/lvh Enclosure

cc: Joe Nagel

Lisa Prochnow